

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



74-2538

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 74-2538

HYMAN RADZANOWER,

Plaintiff-Appellant,

-against-

FIRST NATIONAL BANK OF BOSTON,

Defendant-Appellee,

-against-

TOUCHE, ROSS & CO., TELEPROMPTER CORPORATION,  
JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN,  
H.J. SCHAFLY, LEONARD TOW, R.C. TODD, JR.,  
B.P. SIMON, J.B. GREEN, L.H. READ, R.C. WILSON,  
H.E. FLAHERTY, B.D. FISCHMAN, BERLE ADAMS,  
MARVIN CARTON, R.F. LEWIS, P.L. LOWE, CHARLES  
LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J.H.  
RICHARDSON, M.E. LIVINGSTON and JACK WRATHER,

Defendants.

Appeal from Order of the United States District Court for the Southern District of New York



SUPPLEMENT TO JOINT APPENDIX

DEBEVOISE, PLIMPTON, LYONS &  
GATES  
Attorneys for Defendant-Appellee  
First National Bank of Boston  
299 Park Avenue  
New York, New York 10017  
(212) 752-6400

IRA J. SANDS  
Co-Counsel for Plaintiff-  
Appellant  
701 Seventh Avenue  
New York, New York 10036  
(212) 265-3500

AND

SAMUEL GOTTLIEB  
GAINSBURG, GOTTLIEB, LEVITAN  
& COLE  
Co-Counsel for Plaintiff-  
Appellant  
122 East 42nd Street  
New York, New York 10017  
(212) 697-3440

**PAGINATION AS IN ORIGINAL COPY**

TABLE OF CONTENTS

	<u>Page</u>
Amended Endorsement and Final Judgment as to Defendant First National Bank of Boston.....	A-60
Stipulation.....	A-63

U.S. DISTRICT COURT  
FILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAR 6, 1975

S.D. OF N.Y.

HYMAN RADZANOWER,

: - 74 Civ. 3025 (LFM)

Plaintiff, :

AMENDED ENDORSEMENT  
AND FINAL JUDGMENT  
IS TO DEFENDANT FIRST  
NATIONAL BANK OF  
BOSTON

-against-

TOUCHE, ROSS & CO., et al.,

Defendants. :

MacMahon, D. J.:

The within motion, pursuant to Rules 12(b) (2) and (3), Fed. R.Civ.P., for an order dismissing this action as to defendant First National Bank of Boston on the ground of improper venue, is granted.

Absent waiver or consent, a national bank may be sued only in the district in which it is established. 12 U.S.C. Section 94; Cope v. Anderson, 331 U.S. 461, 467 (1947); Klein v. Bower, 421 F.2d 338, 342 (2d Cir. 1970); Bruns, Nordeman & Co. v. American Nat'l Bank & Trust Co., 394 F. 2d 390 (2d Cir.), cert. denied, 393 U.S. 855 (1968); Buffum v. Chase Nat. Bank of City of N.Y., 192 F. 2d 58 (7th Cir. 1951), cert. denied, 342 U.S. 944 (1952). Movant is established in Boston, Massachusetts, within the meaning of 12 U.S.C. Section 94, because its charter specifies

Boston as its principal place of business. Buffum v.  
Chase Nat. Bank of City of N.Y., supra, 192 F.2d at 60;  
Leonardi v. Chase Nat. Bank of City of N.Y., 81 F. 2d  
19, 22 (2d Cir.), cert. denied, 298 U.S. 677 (1936);  
Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc.,  
358 F. Supp. 1001, 1004 (N.D. Ill. 1973); General Elec-  
tric Credit Corp. v. James Talcott, Inc., 271 F. Supp.  
699 (S.D.N.Y. 1966).

Movant's designation of the New York Superintendent of Banks to receive process on its behalf is not a waiver of this venue provision. Although the language of the designation is broad, it specifically evidences an intent to comply with Section 131(c) of the New York Banking Law, which requires such a designation before a foreign bank can operate in a fiduciary capacity in New York. This designation operates as a waiver of the venue provision only in actions involving movant's fiduciary acts in New York, and no such acts are alleged or involved here.

Accordingly, First National Bank of Boston's motion to dismiss this action on the ground of improper venue is granted in all respects and the Court expressly de-

termines that there is no just reason for delay in the entry of final judgment on this order and hereby directs the entry of such final judgment, and it is further

ORDERED, ADJUDGED AND DECREED that the complaint be and the same hereby is dismissed as to defendant First National Bank of Boston.

Dated: New York, N.Y.  
February 28, 1975

Lloyd F. MacMahon  
U.S.D.J.

Judgment entered-3-6-75

Raymond F. Burghardt  
Clerk

~~February~~ 1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
HYMAN RADZANOWER,

74 Civ. 3025 (LFM)

Plaintiff,

-against-

TOUCHE, ROSS & CO.,  
et al.,

STIPULATION

US DISTRICT COURT

FILED

MAR 6 1975

S.D. OF N.Y.

Defendants.

----- x  
IT IS HEREBY STIPULATED AND AGREED by and between  
the undersigned counsel for plaintiff, HYMAN RADZANOWER,  
and counsel for defendant, FIRST NATIONAL BANK OF BOSTON:

1. That the parties hereto consent that the endorsement herein of HON. LLOYD F. MacMAHON dated October 21, 1974 dismissing the complaint as to defendant, FIRST NATIONAL BANK OF BOSTON, on the ground of improper venue be amended, in the form annexed hereto, to contain a certificate as required under Rule 54(b) and the judgment entered pursuant thereto; and
2. That plaintiff's Notice of Appeal is deemed to be amended so as to include and be an appeal from the amended endorsement and final judgment as herein entered as if the same were originally set forth in such Notice of Appeal; and



3. That the amended endorsement and final judgment as entered herein and this Stipulation shall be incorporated into and be deemed part of the Joint Appendix filed by the parties on the appeal now pending before the United States Court of Appeals for the Second Circuit, No. 74-2538, with the same effect as if originally set forth therein.

Dated: New York, N. Y.

February 10<sup>th</sup>, 1975

GAINSBURG, GOTTLIEB, LEVITAN & COLE

By Richard P. Cole

A Member of the Firm,  
Co-counsel for plaintiff  
HYMAN RADZANOWER

DEBEVOISE, PLIMPTON, LYONS & GATES

By James E. Sater

A Member of the Firm,  
Attorneys for defendant  
FIRST NATIONAL BANK OF BOSTON

So Ordered: FEBRUARY 25, 1975

Lloyd F. MacMahon  
U.S.D.J.



COPY RECEIVED  
DEBEVOISE, PLIMPTON, LYONS & GATES  
By J. M. Schenck  
Date: 3-25-75